

GAHC010120382023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Writ Appeal No.197 of 2023

OM PARKASH TOKAS
S/O SRI VIRBHAN TOKAS,
PRESENTLY RESIDENT AT KUKURMARI, DHALIGAON, DIST.- CHIRANG,
ASSAM. (POSTED AS COMMANDANT, 156 BN, CRPF, IRLA NO. 4798,
CHIRANG, ASSAM). PERMANENT RESIDENT OF H.NO. 22-B, MUNIRKA
VILLAGE, NEW DELHI, PIN- 110007.

VERSUS

1: THE UNION OF INDIA REPRESENTED BY THE SECRETARY, MINISTRY
OF HOME AFFAIRS, NEW DELHI, PIN- 110001.

2: THE DIRECTOR GENERAL CENTRAL RESERVE POLICE FORCE
CGO COMPLEX LODHI ROAD NEW DELHI-110003.

3: THE SPECIAL DIRECTOR GENERAL CENTRAL ZONE
CRPF SECTOR-III SALT LAKE KOLKATA-106.

4: THE INSPECTOR GENERAL OF POLICE (PERS)
CRPF C.G.O. COMPLEX LODHI ROAD NEW DELHI-110003.

5: THE INSPECTOR GENERAL
WB SECTOR CRPF WEST BENGAL-700106.

6: THE INSPECTOR GENERAL
NE SECTOR CRPF SHILLONG-793001.

7: THE DIG RANGE SILIGURI
CRPF WEST BENGAL-734012.

8: THE DIG (OPS) LOWER ASSAM
BONGAIGAON ASSAM PIN- 783385

For the Appellant : Mr. S. Dey, Advocate.

For the Respondents : Mr. R.K.D. Choudhury, Deputy Solicitor General of India.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

24.07.2023

The instant intra-Court writ appeal is directed against the judgment and final order dated 29.05.2023 passed by the learned Single Bench dismissing WP(C) No.3058/2023 preferred by the petitioner (appellant herein) seeking to assail the order of transfer dated 11.05.2023 and the order dated 18.05.2023, whereby the representation of the petitioner against such transfer was dismissed. By the order dated 11.05.2023, the appellant/petitioner, who was posted as the Commandant of 156 Battalion, CRPF, Chirang, has been transferred to RAPO, Meerut.

2. Mr. S. Dey, learned counsel for the appellant/petitioner vehemently and fervently contended that the transfer of the appellant is in contravention to Clause-4 of the Standing Order. He further urged that the appellant has only 11(eleven) months of service left in his career and without any valid reason, in the eve of his service tenure, he has been transferred from the post of Commandant. He further urged that the reasons for transferring the appellant when just 11(eleven) months are left in his service tenure are stigmatic because this Court was given to understand from the record that the appellant herein has not been found suitable to command the Unit. He urges that the appellant has served the CRPF for more than 40(forty) years and thus, in the last stretch of his service career, transferring the appellant with such aspersions would cause severe stigma and would bring about disgrace to the appellant.

3. Mr. Dey, learned counsel for the appellant placed reliance on the judgments rendered by the Bombay High Court in the cases of ***Ramakant Baburao Kendre -Vs- State of Maharashtra & Anr.***, reported in **2012 (1) Mh. L.J. 951**, ***Santosh Machhindra Thite -Vs- State of Maharashtra & Ors.***, reported in **2019 (4) Mh. L.J. 547**, and the judgment rendered by the Calcutta High Court in ***Santi Ranjan Ganguly -Vs- State of West Bengal & Ors.***, reported in **1995 SCC OnLine Cal 176**. He thus urges that the impugned transfer order and the order rejecting the representation of the appellant as well as the order passed by the learned Single Judge deserve to be quashed.

4. Per contra, Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India representing the respondents, vehemently and fervently opposed the submissions advanced by the learned counsel for the appellant. He urged that the appellant himself had submitted a representation in the year 2021 to be transferred to a place nearby his hometown, i.e. Delhi. The competent authority took into account the entirety of the prevailing facts and circumstances and finding that the appellant was not being able to effectively command the Unit, which is deployed at a very sensitive location, a well considered decision was taken to transfer the appellant as per his request. Learned counsel for the respondents contended that the judgments relied upon by the learned counsel for the appellant are not applicable to the extant facts and circumstances because there is no allegation of the writ appellant that the transfer was made against any statutory rules or was made for *malafide* reasons. He thus, implored the Court to dismiss the writ appeal.

5. We have given our thoughtful consideration to the submissions

advanced at bar and have examined the impugned order and the material placed on record.

6. Suffice is to say that law is well settled that transfer is an incident to service. The guidelines governing transfer of employees in any State or Central service are advisory in nature and have no statutory force. The appellant, who is a permanent resident of Delhi, had himself requested for posting at Delhi or near about in the year 2021. The Battalion, which the appellant presently commands being 156 Battalion has around 1100 armed personnel, who are dealing with very difficult and challenging situations. The Unit is deployed in insurgency prone areas in Chirang and any lapse or failure in command may be detrimental in maintaining law and order of the area assigned to the Unit and may even pose threat to the unity and integrity of the nation.

7. Maintaining a firm and resolute command of the Unit deployed in such a sensitive area is imperative for the security of the nation. That being the focus of the highest level of authorities who have perceived that the appellant is not able to perform the said task as per the requirements and thus, a well considered decision was taken to transfer him to Meerut, which is just around 100 Kms from the hometown of the appellant. There is no dispute that the appellant himself had made a written request in the year 2021 to be posted in Delhi and/or near about and hence, the transfer order sub-serves the said purpose.

8. Considering all these facts which have been duly taken into account by the competent authority of CRPF before transferring the appellant, we are of the firm view that the appellant herein has failed to make out any

case so as to call for interference in the impugned transfer order.

9. Resultantly, we are of the firm view that as the authorities have objectively taken stock of the situation and have found the appellant wanting in the field of commanding the Unit properly, there cannot be any reason or justification so as to call for interference in the impugned transfer order. Hence, we are not inclined to interfere with the order passed by the learned Single Bench dismissing the writ petition filed by the petitioner/appellant for challenging his transfer order.

10. Consequently, the appeal fails and is dismissed as being devoid of merit. No order as to costs.

JUDGE

CHIEF JUSTICE

Mukut

Comparing Assistant